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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 EASTERN PROFIT CORPORATION  
5 LIMITED,

Defendant,

6 v.

18 CV 2185 (JGK)

7 STRATEGIC VISION US LLC,

8 Defendant.

CONFERENCE/DECISION

9 -----x  
10 New York, N.Y.  
May 13, 2019  
4:36 p.m.

11 Before:

12 HON. JOHN G. KOELTL,

13 District Judge

14 APPEARANCES

15 ZEICHNER ELLMAN & KRAUSE  
16 Attorneys for Plaintiff  
17 BY: ZACHARY B. GRENDI

18 BARTON LLP  
19 Attorneys for Defendant  
BY: JAMES J. MCGUIRE  
MARK A. BERUBE

20 HODGSON RUSS LLP  
21 Attorneys for Counter Defendant Guo Wengui  
22 BY: JILLIAN M. SEARLES

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1 (Case called)

2 MR. GRENDI: Good afternoon, your Honor.

3 Zach Grendi of Zeichner Ellman Krause, for Eastern  
4 Profit.

5 MR. MCGUIRE: Good afternoon, your Honor.

6 James McGuire and Mark Berube, for the defendant,  
7 Strategic Vision.

8 MS. SEARLES: Good afternoon, your Honor.

9 Jillian Searles of Hodgson Russ, for Miles Kwok, the  
10 counterclaim defendant.

11 THE COURT: I'm sorry, you are?

12 MS. SEARLES: Jillian Searles, on behalf of Miles  
13 Kwok, the counterclaim defendant.

14 THE COURT: Oh, for Mr. Guo?

15 MS. SEARLES: Yes, Guo, a/k/a Miles Kwok, yes.

16 THE COURT: Okay. People in all of their papers have  
17 referred to Mr. Guo as the counterclaim defendant, which would  
18 mean that he's a plaintiff as to whom a counterclaim is  
19 asserted, when, in fact, he's a third-party defendant on a  
20 third-party complaint, even though the parties go on in their  
21 papers without bothering to draw that distinction.

22 MS. SEARLES: Yes, I do agree with you. We had that  
23 discussion within our office, and we've just adopted the  
24 language that was previously adopted by the individuals who  
25 were asserting the counterclaims.

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1           But I do agree with you, we were not the plaintiff to  
2 begin with, so, technically speaking, I don't believe we are  
3 the counterclaim defendant.

4           MR. MC GUIRE: Your Honor, James McGuire, for the  
5 defendant.

6           As you may recall, we are new to the case. We were  
7 substituted in about six weeks ago. But I think the source of  
8 the confusion or the ambiguity may be that prior defense  
9 counsel asserted a counterclaim in which there was an alter ego  
10 allegation as between Mr. Guo and the plaintiff. I'm not  
11 suggesting anything other than that. I just wanted to let your  
12 Honor know that.

13           THE COURT: Right. One would think there is some  
14 distinction. Because if you are a third-party defendant, you  
15 would have a third-party complaint, presumably you'd have a  
16 summons.

17           MR. MC GUIRE: Yes, sir. That's right.

18           THE COURT: So we have the pleading against Mr. Guo  
19 and there's a fully briefed motion to dismiss that complaint  
20 against Mr. Guo. We then have the recent correspondence in  
21 which the defendant says that the complaint has defects. And  
22 the plaintiff responds, If you don't like that complaint, we'll  
23 give you another.

24           So let's take first things first.

25           We have this complaint that's been characterized as a

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1 counterclaim against Mr. Guo that raises three claims. That's  
2 fully briefed. Mr. Guo moved to dismiss whatever it is against  
3 him, and that's resisted. In view of all the other letters, is  
4 that still a motion that should be decided? If so, I'll decide  
5 it. If not, I'll dismiss the motion without prejudice.

6 MS. SEARLES: It was our motion. We moved to dismiss  
7 Mr. Guo out of the case. It's still a valid motion for the  
8 reasons that we set forth in our papers.

9 I'm happy to discuss it further, but we did fully  
10 brief --

11 THE COURT: No, no, I'm familiar with the motion.  
12 I'll decide it. No one tells me it's moot, so I'll decide it.  
13 And then we'll go from there as to what the status of the  
14 pleadings are.

15 The defendant Strategic Vision US LLC ("Strategic  
16 Vision") brings alleged counterclaims against plaintiff Eastern  
17 Profit Corporation Limited ("Eastern Profit") and alleged  
18 counterclaims which are really third-party claims against  
19 third-party defendant Guo Wengui ("Mr. Guo"). Mr. Guo has  
20 moved to dismiss the claims against him under Federal Rule of  
21 Civil Procedure 12(b)(6) for failure to state a claim upon  
22 which relief can be granted

23 In deciding a motion to dismiss pursuant to Rule  
24 12(b)(6), the allegations in the claim are accepted as true and  
25 all reasonable inferences must be drawn in the pleader's favor.

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1 The Court should dismiss the claims if the pleader has -- I'm  
2 sorry. The Court should not dismiss the claims if the pleader  
3 has stated enough facts to state a claim to believe that it's  
4 plausible on its face. The standards for a Rule 12(b)(6)  
5 motion are well-known, and need not be repeated here.

6 The action arises primarily out of a written  
7 agreement, the agreement between Eastern Profit, which is an  
8 entity allegedly controlled by Mr. Guo, and Strategic Vision.

9 Under the agreement, Strategic Vision was to perform  
10 certain research for Eastern Profit. In December 2017, Mr. Guo  
11 was introduced to Strategic Vision by his associate,  
12 Mr. Lianchao. Mr. Guo represented to Strategic Vision that  
13 Mr. Lianchao and another associate, Ms. Yvette ("Ms. Y") had  
14 authority to act on Mr. Guo's behalf.

15 Several conversations between Strategic Vision and  
16 Mr. Guo took place throughout December 2017, in which Strategic  
17 Vision set out the parameters of the research work it could  
18 perform, including its commitment to following United States  
19 law. Mr. Guo told Strategic Vision that he would enter into an  
20 agreement with Strategic Vision through a corporate entity that  
21 he controlled, and that he would fund the entity as necessary.  
22 Strategic Vision later found that the entity was Eastern  
23 Profit, an entity that Strategic Vision now alleges is  
24 undercapitalized, has little or no assets, does not abide by  
25 corporate formalities, and is under the complete domination and

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1 control of its principal.

2 On January 5, Ms. Y met with a principal of Strategic  
3 Vision and discussed the research services sought by Eastern  
4 Profit. The next day, Ms. Y executed the agreement with  
5 Strategic Vision on behalf of Eastern Profit. Strategic Vision  
6 alleges that it entered into the agreement based on Mr. Guo's  
7 earlier promise to fund the entity that turned out to be  
8 Eastern Profit.

9 Strategic Vision immediately commenced its work under  
10 the agreement. As discussed at prior conferences, the nature  
11 of that work contains some mysteries. However, Mr. Guo's and  
12 Eastern Profit's conflicting instructions, inaccessible  
13 communications, and allegedly bizarre behavior hindered and  
14 delayed Strategic Vision in its work. Strategic Vision alleges  
15 that Mr. Guo intentionally engaged in various obstructive  
16 behavior.

17 Eastern Profit terminated the agreement on February  
18 23, 2018. The termination came despite a provision in the  
19 agreement stating that irregular circumstances might slow or  
20 block comprehensive research, but Strategic Vision would  
21 endeavor to produce timely work.

22 Strategic Vision brings three claims against Mr. Guo:

23 First, Strategic Vision claims that Mr. Guo tortiously  
24 interfered with a third-party contract, namely, the agreement,  
25 by engaging in a pattern of conduct designed to impede

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1 Strategic Vision's ability to carry out its obligations under  
2 the agreement.

3 Second, Strategic Vision brings a promissory estoppel  
4 claim against Mr. Guo, contending that it relied upon Mr. Guo's  
5 promise to fund Eastern Profit in deciding to enter the  
6 agreement.

7 Third, Strategic Vision brings a breach of contract  
8 claim against Mr. Guo, arguing that Eastern Profit breached the  
9 agreement by failing to pay Strategic Vision upon terminating  
10 the agreement, and that Eastern Profit is Mr. Guo's alter ego.

11 Mr. Guo argues that Strategic Vision has failed to  
12 state a third-party claim against him for tortious interference  
13 with a third-party contract because there is no third party;  
14 that is, Mr. Guo was acting on behalf of Eastern Profit, a  
15 party to the agreement.

16 A tortious interference with a third-party contract  
17 claim generally may only be brought against a defendant who is  
18 a third party to the contract; the defendant cannot be a party  
19 to the contract at issue. *IMG Fragrances Brands, LLC v.*  
20 *Houbigant, Inc.*, 679 F. Supp. 2d 395, 407 (S.D.N.Y. 2009).  
Officers of a corporation who induce the corporation to breach  
22 a contract are not typically proper subjects of a tortious  
23 interference claim. *Rothschild v. World-Wide Automobiles*  
24 *Corp.*, 264 N.Y.S.2d 705, 706 (App. Div. 1965), *aff'd*, 224  
25 N.E.2d, 724 (N.Y. 1966); see *Murtha v. Yonkers Child Care*

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1       Association, Inc., 383 N.E.2d 865, 866 (N.Y. 1978).

2                  "Otherwise, every corporate breach of contract would  
3        lay the corporation officers open to individual tort  
4        liability." *In re Krautheimer*, 241 B.R. 330, 337, (Bankr.  
5        S.D.N.Y. 1999); *see Application of Brookside Mills*, 94 N.Y.S.2d  
6        509, 518 (App. Div. 1950).

7                  A narrow exception exists for officers acting wholly  
8        outside the scope of their authority for purely personal gain.  
9        *Scuderi v. Springer*, No. 03cv2098, 2004 WL 2711048, at \*2  
10      (S.D.N.Y. Nov. 29, 2004); *see BIB Construction Co. Inc. v. City*  
11      *of Poughkeepsie*, 612 N.Y.S.2d 283, 285 (App. Div. 1994).

12                 But a heightened pleading standard applies to claims  
13        seeking to hold an officer personally responsible in tort for a  
14        corporation's breach of contract. *Joan Hansen & Co. v.*  
15      *Everlast World's Boxing Headquarters Corp.*, 744 N.Y.S.2d 384,  
16      390 (App. Div. 2002). "A pleading must allege in nonconclusory  
17      terms that the acts complained of, whether or not beyond the  
18      scope of the defendant's corporate authority, were performed  
19      with malice and were calculated to impair the plaintiff's  
20      business or the personal profit of the defendant." *Id.* at  
21      390-91.

22                 In this case, Strategic Vision's pleading summarily  
23        set forth Mr. Guo's alleged misconduct without providing any  
24        facts suggesting that he was acting outside of his authority as  
25        the alleged principal of Eastern Profit. Nor do the pleadings

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suggest -- much less meet -- a heightened standard that Mr. Guo acted out of malice to impair Strategic Vision's business for his own personal profit. In its opposition brief, perhaps recognizing for the first time that it effectively sued a party to a contract for third-party tortious interference, Strategic Vision claims that Mr. Guo's conduct was outside his duties because the conduct was "completely at odds with the best interests of Eastern Profit." Opp. at 6.

This conclusory argument, however, was not borne out by the pleadings. Strategic Vision also claims that it "alleges that Mr. Guo committed independent tortious acts, including serious breaches of security that comprised Strategic Vision team members and even caused some to quit." *Id.* But the relevant pleading does not attribute the alleged breach of security to Mr. Guo; in fact, it frames Mr. Guo as the victim of the security breach. See defendant's answer, paragraph 67.

In short, Strategic Vision has not sufficiently alleged a claim for tortious interference with a third-party contract against Mr. Guo. Mr. Guo's motion to dismiss is granted with respect to that third-party claim.

Next, Mr. Guo argues that Strategic Vision's promissory estoppel claim against him fails because there is a written, enforceable contract, namely, the agreement. Thus, Mr. Guo continues, Strategic Vision cannot recover in quasi contract.

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In his reply brief, Mr. Guo also argues for the first time that the statute of frauds precludes Strategic Vision's promissory estoppel claim. However, "where the elements of promissory estoppel are established and the injury to the party who acted in reliance on the oral promise is so great that enforcement of the statute of frauds would be unconscionable, the promisor should be estopped from reliance on the statute of frauds." *In re Estate of Hennel*, 80 N.E.3d 1017, 1022 (N.Y. 2017).

Thus, promissory estoppel can vitiate a statute of frauds claim. But the Court need not reach the statute of frauds issue for two reasons: First, it is well-established that courts should not consider arguments made for the first time in a reply brief. See, for example, *Mateo v. Bristow*, No. 12cv5052, 2013 WL 3863865, at \*8 (S.D.N.Y. July 16, 2013). Second, Strategic Vision has failed to state a claim for promissory estoppel.

"A cause of action for promissory estoppel under New York law requires the plaintiff to prove three elements: 1) a clear and unambiguous promise; 2) reasonable and foreseeable reliance on that promise; and 3) injury to the relying party as a result of the reliance." *Kaye v. Grossman*, 202 F.3d, 611, 615 (2d Cir. 2000)

Under New York law, the doctrine of promissory estoppel can be invoked in two situations: First, to enforce a

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promise absent consideration where there has been detrimental reliance; or second, to enforce a contract that would otherwise be barred by the statute of frauds. See *Merex A.G. v. Fairchild Weston Sys., Inc.*, 29 F.3d 821, 824 (2d Cir. 1994); see also *Joshi v. Trustees of Columbia Univ. in City of New York*, No. 17cv4112, 2018 WL 2417846, at \*8 (S.D.N.Y. May 29, 2018). Strategic Vision invokes the doctrine under the first theory.

Promissory estoppel "is a narrow doctrine" that generally applies only where there is not a written, enforceable contract. *DDCLAB Ltd. v. E.I. Du Pont De Nemours & Co.*, No. 03cv3654, 2005 WL 425495, at \*6 (S.D.N.Y. Feb. 18, 2005). The doctrine is "a legal fiction designed to substitute for contractual consideration where one party relied on another's promise without having entered into an enforceable contract." *Hartford Fire Ins. Co. v. Federated Dep't Stores, Inc.*, 723 F. Supp. 976, 993 (S.D.N.Y. 1989).

Thus, where there is a written, enforceable contract, claims for promissory estoppel are precluded "unless a legal duty independent of the contract -- i.e., one arising out of circumstances extraneous to, and not constituting elements of, the contract itself -- has been violated." *Brown v. Brown*, 785 N.Y.S.2d 417, 419 (App. Div. 2004).

Neither Strategic Vision nor Mr. Guo dispute that the agreement is a written, enforceable contract. Strategic Vision

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1 argues that its promissory estoppel claim is nonetheless  
2 cognizable because it is against Mr. Guo, not Eastern Profit.  
3 And there is no written, enforceable contract between Mr. Guo  
4 and Strategic Vision.

5 Strategic Vision adds that Mr. Guo's promise is wholly  
6 independent of the agreement. The argument is not persuasive.  
7 Mr. Guo's alleged promise was part of the negotiations he made  
8 on Eastern Profit's behalf. Strategic Vision concedes as much  
9 by pleading that (1) Mr. Guo is a principal of -- and indeed  
10 exercises complete domination and control over -- Eastern  
11 Profit; and (2) Strategic Vision and Mr. Guo engaged in the  
12 negotiations that led to the agreement.

13 Strategic Vision therefore alleges its promissory  
14 estoppel claim against Mr. Guo in his representative, not  
15 individual, capacity and, by doing so, is challenging his  
16 promise as it relates to the agreement. See *Trend & Style Asia*  
17 *HK Co. v. Pacific Worldwide, Inc.*, No. 14cv9992, 2015 WL  
18 4190746 at \*6 (S.D.N.Y. July 10, 2015) (dismissing a  
19 promissory estoppel claim against an individual sued in his  
20 representative capacity, where the plaintiff did not allege  
21 that the individual was an alter ego of the corporation  
22 defendants).

23 It defies logic to argue that Mr. Guo's promise was  
24 wholly independent from the agreement and, in the same breath,  
25 argue that it was his promise that induced Strategic Vision to

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1 enter into the agreement. Strategic Vision does not argue that  
2 its promissory estoppel claim is brought against Mr. Guo as an  
3 alter ego of Eastern Profit, although Strategic Vision does  
4 argue that Mr. Guo is the alter ego of Eastern Profit for  
5 purposes of its breach of contract claim against him. In any  
6 event, this distinction is not meaningful because Strategic  
7 Vision has not alleged adequately that Mr. Guo is the alter ego  
8 of Eastern Profit.

9           Additionally, Strategic Vision contends that it relied  
10 on Mr. Guo's promise to fund Eastern Profit such that Eastern  
11 Profit could meet its monetary duties under the agreement. The  
12 agreement itself provides terms for pricing and payment. Thus,  
13 Strategic Vision's promissory estoppel claim relates directly  
14 to Eastern Profit's alleged breach of those terms of the  
15 agreement. The claim "seeks nothing more than a second bite at  
16 the breach of contract apple." See *SungChang Interfashion Co.*  
17 v. *Stone Mountain Accessories, Inc.*, No. 12cv7280, 2013 WL  
18 5366373 at \*19 (S.D.N.Y. Sept. 25th, 2013).

19           In fact, Strategic Vision brings a breach of contract  
20 counterclaim or third-party claim against Eastern Profit --  
21 counterclaim against Eastern Profit and a breach of contract  
22 third-party claim against Mr. Guo as the alter ego of Eastern  
23 Profit for their alleged failures to pay under the agreement.

24           Accordingly, Mr. Guo's motion to dismiss is granted  
25 with respect to Strategic Vision's promissory estoppel claim.

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Finally, Mr. Guo argues that Strategic Vision's breach of contract claim against him failed because he is not personally a party to the agreement and Strategic Vision has not alleged sufficient facts to pierce the corporate veil and hold him individually liable for Eastern Profit's alleged breach of the agreement.

"An individual officer can be held liable for a corporate defendant's breach of contract if the corporation served as the alter ego of the officer." *Sheldon v. Sethna*, No. 10cv4128, 2012 WL 1022895, at \*8 (S.D.N.Y. Mar. 26, 2012). "It is well settled that New York courts are reluctant to disregard the corporate entity." *William Wrigley Jr. Co. v. Waters*, 890 F.2d 594, 600 (2d Cir. 1989).

"Generally, piercing the corporate veil requires a showing that (1) the owner exercise complete domination and control of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in the plaintiff's injury." *Morris v. N.Y. State Dep't of Taxation and Fin.*, 623 N.E.2d, 1157, 1160 (N.Y. 1993).

Courts consider a lengthy list of factors when determining whether it is appropriate to pierce the corporate veil. See *William Passalacqua Builders, Inc. v. Resnick Devs. S., Inc.*, 933 F.2d 131, 139 (2d Cir. 1991), detailing ten factors. See *Freeman v. Complex Computing Co.*, 119 F.3d 1044,

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1 1053 (2d Cir. 1997); see also *JSC Foreign Econ. Ass'n  
2 Technostroyexport v. Int'l Dev. & Trade Servs., Inc.*, 295 F.  
3 Supp. 2d 366, 377-78 (S.D.N.Y. 2003).

4 Strategic Vision does not plead sufficient factual  
5 allegations bearing on Mr. Guo's domination of Eastern Profit.  
6 Strategic Vision only pleads that "upon information and belief,  
7 Mr. Guo is the principal of Eastern Profit; Eastern Profit has  
8 little or no assets and is undercapitalized and is unable to  
9 pay the amounts owed under the agreement; Eastern Profit is  
10 under the complete domination and control of Mr. Guo; and  
11 Eastern Profit has failed to abide by corporate formalities."

12 Although these allegations concern a few of the  
13 factors relevant to piercing the corporate veil, they are  
14 wholly conclusory and fail to provide grounds to meet the  
15 "heavy burden" of demonstrating that Mr. Guo dominated Eastern  
16 Profit. See *Krause v. Eihab Human Servs., Inc.*, No. 10cv898,  
17 2015 WL 4645210 at \*16 (E.D.N.Y. Aug. 4, 2015); see also  
18 *Societe d'Assurance de l'Est SPRL v. Citigroup, Inc.*, No. 10cv  
19 4754, 2011 WL 4056306, at \*5 (S.D.N.Y. Sept. 13, 2011)

20 Moreover, Strategic Vision has not alleged adequately  
21 that Mr. Guo used the corporate form to commit a fraud or other  
22 wrong. An ordinary "breach of contract without evidence of  
23 fraud or corporate misconduct is not sufficient to pierce the  
24 corporate veil, which is an equitable remedy at its core." Am.  
25 *Federated Title Corp. v. GFI Mgmt. Servs., Inc.*, 126 F. Supp.

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1       3d 388, 403 (S.D.N.Y. 2015), aff'd 716 F. App'x 23 (2d Cir.  
2       2017).

3                     Strategic Vision argues that Mr. Guo's promise to fund  
4       Eastern Profit constituted a wrongful act apart from the  
5       alleged breach of contract. But for the same reasons discussed  
6       with respect to Strategic Vision's promissory estoppel claim,  
7       this allegation simply restates an aspect of Strategic Vision's  
8       breach of contract claim.

9                     Moreover, Mr. Guo's promise is not alleged to have  
10      misrepresented present fact. As pleaded, the promise can only  
11      be characterized as "an insincere promise of future  
12      performance," which is part of a breach of contract claim. See  
13      *Gosmile, Inc. v. Levine*, 915 N.Y.S.2d 521, 524 (App. Div.  
14      2010).

15                   Strategic Vision points out that "New York courts have  
16      held that using a completely dominated dummy or shell company  
17      created for the sole purpose of signing a lease and breaching  
18      the lease is a sufficient wrong to justify piercing the  
19      corporate veil." *Am. Federated Title Corp. v. GFI Mgmt.*  
20      *Servs., Inc.* 39 F. Supp. 3d 516, 526 (S.D.N.Y. 2014).

21                   However, Strategic Vision has not alleged sufficiently  
22      that Mr. Guo completely dominates Eastern Profit. The  
23      pleadings do not suggest that Eastern Profit was created for  
24      the sole purpose of signing and then breaching the agreement.

25                   Finally, Strategic Vision cites *Skanska USA Building*,

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1       *Inc. v. Atlantic Yards v. B2 Owner LLC* in support of its claim  
2       that the corporate veil should be pierced. 40 N.Y.S. 3d 46, 54  
3       (App. Div. 2016), aff'd, 98 N.E.3d 720 (N.Y. 2018).

4                  The court in *Skanska* simply suggested that if the  
5       plaintiff in that case had pleaded that it believed it was  
6       contracting with or had rights *vis-à-vis* the alleged alter ego,  
7       then the plaintiff's failed piercing claim might stand.  
8       However, Strategic Vision's pleading belies such a theory. The  
9       pleadings state that Strategic Vision understood that Mr. Guo,  
10      Eastern Profit's alleged alter ego, would fund a company, and  
11      that Strategic Vision would enter into the agreement with that  
12      company. The pleadings do not provide any suggestion that  
13      Strategic Vision believed it was entering into a contract with  
14      or that it had rights against Mr. Guo.

15                  Mr. Guo's motion to dismiss is granted with respect to  
16      the breach of contract third-party claim against him.

17                  The Court has considered all the arguments raised by  
18      the parties. To the extent not specifically addressed, the  
19      arguments are either moot or without merit.

20                  For the reasons expressed above, Mr. Guo's motion to  
21      dismiss the third-party claims against him is granted.

22                  The claims are dismissed without prejudice.

23                  So ordered.

24                  The clerk will be directed to close Docket No. 65.

25                  Now, realistically, the plaintiff wants the

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1 opportunity to file an amended complaint in order to avoid  
2 arguments made by the defendant that the current complaint is  
3 insufficient. So if there's going to be an amended complaint,  
4 then there's going to be an answer. And one expects that in  
5 the answer there will be an effort to plead new counterclaims  
6 and perhaps a new third-party claim against Mr. Guo.

7           The claims against Mr. Guo are dismissed without  
8 prejudice.

9           One senses that the parties are more interested in the  
10 pleadings than they are in a trial of this case in which all of  
11 the circumstances of the contract between the parties are fully  
12 aired. When I've raised with the parties before what the  
13 nature of these strategic services and information is that was  
14 being uncovered by the defendant, I've been met with  
15 descriptions which are best described as mysterious.

16           All I can glean from the papers is that -- and the  
17 parties can correct me if I'm wrong, that the nature of the  
18 services to be performed by Strategic Vision are some form of  
19 corporate intelligence, and perhaps that's a euphemism.

20           With respect to specific individuals who -- and the  
21 parties can correct me if I'm wrong again, but who are members  
22 of the Chinese Communist Party, and the defendant places one of  
23 the restrictions on the contract that it won't do anything in  
24 violation of United States law, why this research into members  
25 of the Chinese Communist Party may violate New York or United

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1 States law is itself a mystery.

2           But having set this out, and having dealt with this  
3 case over some period of time, and having watched the parties  
4 fence over the basic allegations in the complaint, the thought  
5 that you may eventually try this case in open court before a  
6 New York jury seems to me to be quite strained. Now, I could  
7 be completely wrong; you may be all really eager to present  
8 your case to a New York jury. I certainly would be happy to  
9 listen to it.

10           On the other hand, I really don't have a great desire  
11 to continue to decide pleading motions while you all fence. So  
12 reading the papers, sure, plaintiff wants to file an amended  
13 complaint to avoid problems raised by the defendant. The  
14 defendant wants to, I'm sure, raise more counterclaims against  
15 the plaintiff, and perhaps a third-party claim.

16           You have a discovery cutoff, right, and a  
17 confidentiality order with respect to all of the work that was  
18 being done, right?

19           MR. GRENDI: Yes, your Honor.

20           THE COURT: So what's your discovery cutoff?

21           MS. SEARLES: Your Honor, it's July 15.

22           MR. MCGUIRE: July 15, your Honor.

23           THE COURT: July 15th. Wow.

24           You haven't gone to the magistrate judge yet to talk  
25 about settlement, right?

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1 MR. GRENDI: No, your Honor.

2 THE COURT: No.

3 I'll send you to the magistrate judge to talk about  
4 settlement.

5 When does the plaintiff want to file an amended  
6 complaint?

7 MR. GRENDI: Your Honor, I did already file it under  
8 Rule 15(a)(1).

9 THE COURT: Fine.

10 MR. GRENDI: So, your Honor, I don't think there's  
11 anything to be filed again, assuming that you embrace my  
12 interpretation of the rule there, your Honor.

13 THE COURT: I'm not sure I raised it, but I'll  
14 authorize you to file it, so that's good enough.

15 MR. GRENDI: Thank you.

16 THE COURT: When does the defendant want to answer or  
17 move with respect to the amended complaint?

18 MR. McGUIRE: We'd ask for 30 days, your Honor.

19 THE COURT: Sure.

20 Do you think that you will be filing a motion to  
21 dismiss the amended complaint?

22 MR. McGUIRE: We believe a number of the defects that  
23 attach to the prior amended complaint to which we consented  
24 when we first were substituted in follow and adhere to this new  
25 amended complaint.

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1           I'm mindful of your Honor's comments. I don't in any  
2 way want to run afoul of them.

3           THE COURT: Don't take me wrong. You're not running  
4 afoul of them. You're welcome to file a motion to dismiss any  
5 of the claims, and I will decide the motion on the facts and  
6 the law.

7           MR. McGUIRE: Your Honor, does that mean that we would  
8 not be filing the premotion conference letter --

9           THE COURT: Right. You don't need a premotion  
10 conference.

11           MR. McGUIRE: Very well.

12           THE COURT: So it's the third amended complaint; is  
13 that right?

14           MR. GRENDI: It's the second amended, but I guess it's  
15 the third pleading.

16           THE COURT: So the second amended complaint is deemed  
17 filed, and the defendant will file an answer or motion by --

18           MR. McGUIRE: Your Honor, may we have until June 11?

19           THE COURT: Sure.

20           MR. McGUIRE: I have a personal commitment on June --

21           THE COURT: No, I'm going to give you till the end of  
22 the week.

23           MR. McGUIRE: That will be great. Thank you.

24           THE COURT: Do you want June 11?

25           MR. McGUIRE: If you'll give me till the end of the

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1 week, I'll take it.

2 THE COURT: June 14th.

3 MR. McGUIRE: Very good.

4 THE COURT: I like to make things on Fridays or  
5 Monday, if appropriate.

6 And then the reply -- well, response, defendant will  
7 file motion to dismiss June 14th, response -- really can't do  
8 it July 5th, so July 8. And then the reply, July 19.

9 Do you intend to file a third-party claim against  
10 Mr. Guo?

11 MR. McGUIRE: I honestly don't know, your Honor.

12 THE COURT: Okay. But if you do, I assume even though  
13 it wasn't talked about in the last round of pleadings,  
14 shouldn't there be a -- Mr. Guo never got a summons, did he?

15 MR. McGUIRE: Again, your Honor, I was not involved at  
16 that point.

17 THE COURT: Okay.

18 MS. SEARLES: He did not, your Honor.

19 THE COURT: Talk to Mr. Guo's counsel, who has  
20 graciously appeared even though he probably was not summoned in  
21 the case. And talk to Mr. Guo's counsel about whether they'll  
22 accept service --

23 MR. McGUIRE: Understood, yes.

24 THE COURT: -- of the summons and third-party  
25 complaint.

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1               Okay. And I'll refer it to the magistrate judge for  
2 settlement.

3               Okay. Is there anything else that I can do today?

4               MR. MC GUIRE: Just a question, your Honor.

5               THE COURT: Sure.

6               MR. MC GUIRE: In referring us to the magistrate, would  
7 that potentially encapsulate a possible mediation or --

8               THE COURT: Yes, for settlement.

9               MR. MC GUIRE: Okay.

10              THE COURT: That's the only reason I'm sending it --  
11 would the parties -- I can't send you to the magistrate judge  
12 for all purposes, including trial, because I don't know what  
13 the status of Mr. Guo is. And I don't know if he would consent  
14 to trial before the magistrate judge.

15              But by sending it to the magistrate judge, I'm sending  
16 it to the magistrate judge for purposes of settlement. So,  
17 yes, that will be for mediation by the magistrate judge.

18              And I would urge you, if you don't hear -- I'll call  
19 the magistrate judge. It's Magistrate Judge Freeman. I don't  
20 know what her calendar is like these days, but I would sure  
21 like her to meet with you sooner rather than later. And you're  
22 welcome to call the magistrate judge's chambers. My reference  
23 will go out surely by tomorrow.

24              MR. MC GUIRE: Thank you, your Honor.

25              MR. GRENDI: Thank you, your Honor.

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1                   THE COURT: My experience is that you can get a  
2 quicker resolution from the magistrate judge than you can from  
3 the mediation panel of the court. But if you prefer me to send  
4 you to the mediation panel of the court, I would be happy to do  
5 that too. But I usually prefer the magistrate judges.

6                   MR. MC GUIRE: Is that something perhaps Mr. Grendi and  
7 I can confer on and perhaps get back to you within a day or  
8 two?

9                   THE COURT: Sure. Absolutely.

10                  MR. MC GUIRE: We're scheduled to speak about other  
11 matters on Friday. If we let the Court know by Friday, would  
12 that be agreeable?

13                  THE COURT: Sure. I'm going to refer it to the  
14 magistrate judge. But it's easy enough, the magistrate judge  
15 will applaud my sending it to the mediation panel.

16                  MR. MC GUIRE: We'll come back to your Honor by Friday,  
17 if that's agreeable.

18                  THE COURT: Okay.

19                  MR. MC GUIRE: Thank you.

20                  THE COURT: Anything else?

21                  MR. GRENDI: No, your Honor.

22                  THE COURT: Okay. Good to see you, all.

23                  MR. GRENDI: Thank you.

24                  MR. MC GUIRE: Thank you.

25                  MS. SEARLES: Thank you, your Honor. (Adjourned)